

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

MCKESSON AUTOMATION, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 06-028 (SLR/LPS)
	)	
SWISSLOG ITALIA S.P.A. and	)	
TRANSLOGIC CORPORATION	)	
	)	
Defendants.	)	

**STIPULATED SIXTH AMENDED SCHEDULING ORDER**

The parties hereto hereby stipulate and agree, subject to the Court's approval, to amend the following paragraphs of the Scheduling Order entered in this case on May 16, 2006 [D.I. 38] to read as follows:

3. Discovery.

e. Discovery Cut Off. Fact discovery in this case shall be initiated so that it will be completed on or before January 31, 2008. Unless specifically agreed to otherwise by the parties, no depositions of additional witnesses, other than experts, Mr. Heilman, Mr. Demmler, Mr. Balsamo, Mr. Provvisionato, Steven Weisburd, Alfred Fabricant and Ian Blum, shall be noticed after October 10, 2007 unless otherwise ordered by the Court. The parties recognize that willfulness discovery may need to continue beyond the January 31 deadline due to scheduling issues associated with Messrs. Provvisionato's and Balsamo's depositions as well as this Court's December 3, 2007 Order. Notwithstanding, by making this stipulation, Defendants are not agreeing to permit any depositions relating to willfulness beyond those expressly permitted by the Court and/or those properly noticed prior to the Court's December 3, 2007 Order. Nothing in this Stipulation shall be construed as a concession by Defendants to permit

the noticing of any additional depositions relating to willfulness. The parties are working to complete such discovery as expeditiously as possible. Expert discovery shall be initiated so that it will be completed on or before May 31, 2008 and will include any new factual issues raised by the expert reports. The Court encourages the parties to serve and respond to contention interrogatories early in the case. Unless otherwise ordered by the Court, the limitations on discovery set forth in Local Rule 26.1 shall be strictly observed.

f. Disclosure of Expert Testimony. Unless otherwise agreed to by the parties, they shall file their initial Federal Rule of Civil Procedure 26(a)(2) disclosures of expert testimony on or before March 31, 2008, and file a supplemental disclosure to contradict or rebut evidence on the same subject matter identified by another party on April 23, 2008. The parties recognize that expert testimony regarding willfulness may be needed and that any such expert discovery and disclosure of expert testimony may need to occur outside of the time periods set forth for such discovery because of the timing of willfulness fact discovery referred to above. To the extent any objection to expert testimony is made pursuant to the principles announced in *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S.579 (1993), it shall be made by motion no later than the deadline for dispositive motions set forth herein, unless otherwise ordered by the Court.

10. Case Dispositive Motions. All case dispositive motions, an opening brief, and affidavits, if any, in support of the motion shall be served and filed on or before July 11, 2008. Opposition briefs shall be served and filed on or before August 1, 2008. Reply briefs shall be served and filed on or before August 8, 2008.

11. Claim Construction Issue Identification. On March 19, 2008, the parties shall exchange a list of those claim term(s)/phrase(s) that they believe need construction and their proposed claim construction of those term(s)/phrase(s). This document will not be filed

with the Court. Subsequent to exchanging that list, the parties will meet and confer to prepare a Joint Claim Construction Chart to be submitted pursuant to paragraph 12 below. The parties Joint Claim Construction Chart should identify for the Court the term(s)/phrase(s) of the claim(s) in issue, and should include each party's proposed construction of the disputed claim language with citation(s) only to the intrinsic evidence in support of their respective proposed constructions. A copy of the patent(s) in issue as well as those portions of the intrinsic record relied upon are to be submitted with this Joint Claim Construction Chart. In this joint submission, the parties shall not provide argument.

12. Claim Construction. The parties shall serve the Joint Claim Construction Chart no later than April 25, 2008. Plaintiff and Defendants shall simultaneously serve and file opening briefs regarding issues of claim construction on or before May 23, 2008. Responsive briefs regarding issues of claim construction shall be served and filed on or before June 20, 2008. After submission of the responsive claim construction briefs, amendment or modification of any claim construction position may be made only by order of the Court, which shall be entered only upon a showing of good cause.

13. Hearing on Claim Construction/Case Dispositive Motions. Beginning at \_\_\_\_\_, on \_\_\_\_\_, the Court will hear evidence and argument on claim construction and case dispositive motions.

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*Counsel for Defendants Swisslog Italia S.p.A.  
and Translogic Corporation*

SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2008.

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United States Magistrate Judge



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March 7, 2008

**VIA CMF AND HAND DELIVERY**

The Honorable Leonard P. Stark  
U.S. District Court for the District of Delaware  
844 King Street  
Wilmington, DE 19801

Re: McKesson Automation, Inc. v. Swisslog Italia S.p.A. et al.;  
C.A. No. 06-028-SLR/LPS

Your Honor:

Counsel for both parties submit the attached Proposed Stipulated Sixth Amended Scheduling Order. The parties seek the Court's approval of new dates for expert discovery and *Markman* and summary judgment briefing. The parties also agreed to specific times for opposition and reply summary judgment briefs to account for conflicts in counsel's schedules.

Respectfully submitted,

A handwritten signature in black ink that reads "Dale Dube".

Dale R. Dube  
No. 2863

DRD:pb

Attachment

cc: Clerk of Court (by CM/ECF)  
Julia Heaney, Esquire (by CM/ECF and hand delivery)  
Lawrence C. Drucker, Esquire (by email and First Class Mail)  
Alfred R. Fabricant, Esquire (by email and First Class Mail)  
Richard LaCava, Esquire (by email and First Class Mail)  
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